

117TH CONGRESS  
1ST SESSION

# S. 2795

To require the Secretary of Homeland Security to use alternatives to detention for certain vulnerable immigrant populations, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22 (legislative day, SEPTEMBER 21), 2021

Ms. CORTEZ MASTO (for herself, Mr. BLUMENTHAL, Mr. MARKEY, Mr. MERKLEY, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To require the Secretary of Homeland Security to use alternatives to detention for certain vulnerable immigrant populations, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,*

**3 SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Alternatives to Deten-  
5 tion Act of 2021”.

**6 SEC. 2. DEFINITIONS.**

7       In this Act:

8           (1) DEPENDENT CAREGIVER.—The term “de-  
9 pendent caregiver” means an individual who lives

1       with, and provides more than ½ of the financial  
2       support required by, a family member who is—

3                 (A) younger than 18 years of age; or  
4                 (B) unable to engage in substantial em-  
5                 ployment due to a physical or mental health  
6                 condition or disability.

7                 (2) EXECUTIVE DEPARTMENTS.—The term “ex-  
8         ecutive departments” means the Federal Depart-  
9         ments listed under section 101 of title 5, United  
10        States Code.

11                 (3) FAMILY CAREGIVER.—The term “family  
12         caregiver” means an individual who lives with, and  
13         provides more than ½ of the personal care required  
14         by, a family member who is—

15                 (A) younger than 18 years of age; or  
16                 (B) unable to engage in substantial em-  
17                 ployment due to a physical or mental health  
18                 condition or disability.

19                 (4) FAMILY MEMBER.—The term “family mem-  
20         ber”, with respect to an individual receiving personal  
21         care services or financial support, means an indi-  
22         vidual who is—

23                 (A) a parent or legal guardian;  
24                 (B) a spouse;  
25                 (C) a child;

7                             (6) LEGAL GUARDIAN.—The term “legal guard-  
8                             ian” means a legal guardian, as defined under State  
9                             law or under the law of a foreign country.

13 (A) is an asylum seeker or is otherwise  
14 seeking lawful status;

15 (B) is a victim of torture or trafficking;

16 (C) has special religious, cultural, or spir-  
17 itual considerations:

18 (D) is pregnant or nursing;

19 (E) is younger than 21 years of age;

20 (F) is older than 60 years of age;

(G) identifies as gay, lesbian, bisexual,  
transgender, or intersex;

23 (H) is a victim or a witness of a crime;

24 (I) has a mental disorder or physical dis-  
25 ability; or

(J) is experiencing severe trauma or is a survivor of torture or gender-based violence, as determined by an immigration judge or the Secretary based on information obtained—

5 (i) by the attorney or legal services  
6 provider of the individual during the intake  
7 process; or

(ii) through credible reporting by the individual.

10                             (8) PARENT.—The term “parent” means a bio-  
11                             logical or adoptive parent of a child, whose parental  
12                             rights have not been relinquished or terminated  
13                             under State law or the law of a foreign country.

16 SEC. 3. ALTERNATIVES TO DETENTION UNDER THE IMMIGRATION  
17 LAWS.

18 (a) ESTABLISHMENT.—

19                   (1) IN GENERAL.—The Secretary shall establish  
20                   programs to provide alternatives to detention under  
21                   the immigration laws.

22                   (2) AVAILABILITY.—The programs required  
23       under paragraph (1) shall be available to an alien  
24       regardless of whether—

15       (b) RESTORATION OF THE FAMILY CASE MANAGE-  
16 MENT PROGRAM.—Not later than 7 days after the date  
17 of the enactment of this Act, the Secretary shall fully re-  
18 store the U.S. Immigration and Customs Enforcement  
19 Family Case Management Program, as constituted on  
20 January 21, 2016, which shall—

21                             (1) provide community supervision and commu-  
22                             nity support services, including case management  
23                             services, appearance services, and screening of aliens  
24                             who have been detained; and

1                             (2) be carried out through a contract with a  
2                             nongovernmental organization that has dem-  
3                             onstrated expertise in providing such supervision  
4                             and support services.

5                             (c) DETERMINATION OF VULNERABLE POPULATION  
6                             OR CAREGIVER STATUS REQUIRED.—

7                             (1) IN GENERAL.—Subject to paragraphs (2)  
8                             and (3), not later than 72 hours after taking an in-  
9                             dividual into custody under the immigration laws,  
10                            the Secretary, the Commissioner of U.S. Customs  
11                            and Border Protection, an immigration officer, or an  
12                            immigration judge shall make an individualized de-  
13                             termination with respect to—

14                             (A) whether the individual may participate  
15                             in an alternatives to detention program, includ-  
16                             ing the Family Case Management Program de-  
17                             scribed in subsection (b); and

18                             (B) the appropriate level of supervision for  
19                             such individual.

20                             (2) PRESUMPTION FOR PLACEMENT IN ALTER-  
21                             NATIVES TO DETENTION PROGRAM.—

22                             (A) IN GENERAL.—There shall be a pre-  
23                             sumption for placement in an alternatives to de-  
24                             tention program that is a community-based su-  
25                             pervision program for any alien who is—

4 (ii) a member of a vulnerable popu-  
5 lation, a parent of a child who is younger  
6 than 18 years of age, a dependent care-  
7 giver, or a family caregiver.

(B) for whom release on bond or recognizance is determined to be a sufficient measure to ensure appearances at immigration proceedings and public safety.

24 (d) COORDINATOR OF ALTERNATIVES TO DETEN-  
25 TION.—

1                         (1) IN GENERAL.—Not later than 30 days after  
2                         the date of the enactment of this Act, the Secretary  
3                         shall—

4                             (A) establish within the Department of  
5                         Homeland Security the position of Coordinator  
6                         of Alternatives to Detention (referred to in this  
7                         subsection as the “Coordinator”), who shall re-  
8                         port directly to the Secretary; and

9                             (B) appoint the Coordinator.

10                         (2) RESOURCES.—The Secretary shall make  
11                         available to the Coordinator such personnel, funds,  
12                         and other resources as may be appropriate to enable  
13                         the Coordinator to carry out the mission described  
14                         in paragraph (3)(A).

15                         (3) MISSION AND DUTIES.—

16                             (A) MISSION.—The mission of the Coordi-  
17                         nator shall be to coordinate, in collaboration  
18                         with the executive departments, the use of al-  
19                         ternatives to detention programs.

20                             (B) DUTIES OF COORDINATOR.—

21                                 (i) IN GENERAL.—The Coordinator  
22                         shall—

23                                     (I) serve as the primary point of  
24                         contact within the executive branch  
25                         for Congress, State and local govern-

ments, the private sector, and community leaders with respect to the alternatives to detention programs; and

(II) in coordination with the executive departments, with respect to Congress, State and local governments, the private sector, and community leaders, manage information flow about, requests for actions relating to, and discussions on, such programs.

(ii) REPORTS REQUIRED.—

(I) MONTHLY REPORTS.—Not later than 30 days after the date on which the Coordinator is appointed, and every 30 days thereafter, the Coordinator shall submit a report to Congress that includes, for the reporting period—

(aa) the number of individuals detained under the immigration laws—

(AA) pending a decision  
n whether the individual is  
o be removed; and

(BB) after the issuance  
of a removal order;

(bb) an assessment whether  
any individual described in item  
(aa) is subject to the special rule  
under subsection (c)(2)(B); and

(cc) the number of individuals  
participating in an alternatives to detention program es-  
tablished under subsection (a),  
disaggregated by the level of su-  
pervision of such individuals.

(II) ANNUAL REPORTS.—Not later than 1 year after the date on which the Coordinator is appointed, and annually thereafter, the Coordinator shall submit a report to Congress that includes—

19 (aa) guidance and require-  
20 ments for referral and placement  
21 decisions in alternatives to deten-  
22 tion programs;  
23 (bb) information on enroll-  
24 ment in alternatives to detention

1 programs, disaggregated by field  
2 office;

3 (cc) information on the  
4 length of enrollment in alter-  
5 natives to detention programs,  
6 disaggregated by type of alter-  
7 native to detention program; and

(dd) information on the population enrolled in alternatives to detention programs, disaggregated by type of alternative to detention program and point of apprehension.

23 (iii) otherwise cooperate with the Co-  
24 ordinator to the maximum extent prac-

1                   ticable to facilitate the performance of the  
2                   mission described in subparagraph (A).

3         (e) GAO STUDY AND REPORT.—The Comptroller  
4 General of the United States shall—

5                   (1) conduct a study on the use and effectiveness  
6                   of the alternatives to detention programs established  
7                   pursuant to subsection (a); and

8                   (2) not later than 2 years after the date of the  
9                   enactment of this Act, submit a report to Congress  
10                  that contains the results of the study conducted pur-  
11                  suant to paragraph (1).

12 **SEC. 4. SAVINGS PROVISIONS.**

13         (a) FEDERAL LAW.—Nothing in this Act may be con-  
14                  strued to supersede or modify—

15                   (1) the William Wilberforce Trafficking Victims  
16                  Protection Reauthorization Act of 2008 (8 U.S.C.  
17                  1232 et seq.);

18                   (2) the Stipulated Settlement Agreement filed  
19                  in the United States District Court for the Central  
20                  District of California on January 17, 1997 (CV 85–  
21                  4544–RJK) (commonly known as the “Flores Settle-  
22                  ment Agreement”);

23                   (3) the Homeland Security Act of 2002 (6  
24                  U.S.C. 101 et seq.); or

1                             (4) any applicable Federal child welfare law, in-  
2                             cluding the Adoption and Safe Families Act of 1997  
3                             (Public Law 105–89).

4                             (b) STATE LAW.—Nothing in this Act may be con-  
5                             strued to supersede or modify any applicable State child  
6                             welfare law.

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